

RECEIVED  
MAR 12 1996

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Implementation of Sections of )  
the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 -- Rate Regulation )  
 )  
Uniform Rate-Setting Methodology )

CS Docket No. 95-174

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding. In this proceeding, the Commission proposes to modify its cable rate rules to provide an alternative methodology that would allow an operator to charge its customers the same rates for the same service throughout a region.

**I. UNIFORM RATE-SETTING WILL SERVE THE PUBLIC INTEREST**

The initial comments filed in this proceeding show near universal agreement with the Commission's tentative conclusion that the public interest would be served by allowing a cable operator to establish rate uniformity for service to households across franchise boundaries. The comments of the numerous cable operators in this proceeding demonstrate that the existing requirement for establishing franchise-specific rates imposes

significant inefficiencies on the development and marketing of cable television services.<sup>1</sup>

It also causes confusion for customers,<sup>2</sup> and increases administrative burdens in calculating and reviewing franchise-specific cable rates. These inefficiencies come at a cost borne by both operators and their customers, as significant resources must be diverted from the business of providing new and improved services to customers.

All of the cable operators filing in this proceeding -- as well as at least one state regulatory authority<sup>3</sup> -- agree that establishing an alternative methodology to calculate uniform rates would serve the public interest by reducing these inefficiencies at the same time that subscribers will be protected against paying unreasonable rates. The only dissenters in this proceeding from the Commission's proposal are certain franchising authorities. For example, NATOA, while claiming that it is "not opposed to uniform

---

<sup>1</sup> For example, the Comments of Cablevision Systems Corporation detail the lost efficiencies and additional expense caused by having to "micromarket" to each discrete franchise area. Comments of Cablevision Systems Corp. at 3-9 (filed Feb. 12, 1996). TCI and Continental Cablevision, in their Joint Comments, identify the numerous benefits that can be expected from allowing rate uniformity across franchise boundaries -- such as minimizing customer confusion, enhancing consumers' ability to compare prices of competing services, facilitating region-wide promotions, and improving customer service efforts. Joint Comments of Tele-Communications, Inc. and Continental Cablevision, Inc. at 2-4.

<sup>2</sup> Time Warner Cable's Comments provide concrete examples of this confusion in the Charlotte, North Carolina area, and in other of its service regions. Comments of Time Warner Cable at 2-3.

<sup>3</sup> The Comments of the State of New Jersey Board of Public Utilities "favors uniform rates for uniform services" so long as it is limited to rates within a single state, and so long as establishment of such rates "will not give rise to a massive channel restructuring which could lead to confusion among subscribers." Comments of New Jersey Board Public Utilities at 2 (filed Jan. 11, 1996).

cable rates,”<sup>4</sup> argues that the Commission’s proposal “may adversely affect subscribers and negatively impact the development of competition in the video services marketplace.”<sup>5</sup> Upon examination, however, NATOA’s concerns are without merit.

First, NATOA attempts to dismiss the concept of rate uniformity, arguing that any resulting rate changes would be based “not on changing costs or improved service offerings, but on industry demands for greater profits.”<sup>6</sup> But neither of the two alternative Commission formulas described in the Notice gives operators any “greater profits,” as NATOA alleges. Rather, the essence of each formula would be a “revenue neutral” restructuring of rates. Rates will still be capped by the FCC’s existing benchmark and “going forward” calculations.

Second, NATOA professes concern that subscribers will face another round of rate changes occasioned by a move to uniform rates.<sup>7</sup> Operators, too, are sensitive to their customers and to the need to minimize the number of rate changes that will occur throughout the year. There is no reason to believe -- and NATOA presents none -- that operators will introduce multiple rate changes during a year in order to achieve rate

---

<sup>4</sup> Comments of the National Association of Telecommunications Officers and Advisors (filed Feb. 12, 1996) at 2.

<sup>5</sup> Id.

<sup>6</sup> Id. at 2.

<sup>7</sup> NATOA focuses on the fact that some subscribers will receive rate increases under either methodology. But rate decreases will also flow from moving to rate uniformity. And in any event, any rate increases that do occur will likely be modest. See Appendix A, Notice of Proposed Rulemaking (describing rate changes occasioned by the FCC’s proposal).

uniformity. But, in any event, the answer to NATOA's alleged concern -- should it prove to be a genuine problem -- would be to limit an operator's ability to make multiple rate filings, as the Commission already has done in its annual rate filing process. The answer is not to deny altogether an operator's ability to move toward rational rate-setting.

## **II. THE COMMISSION HAS AUTHORITY UNDER THE CABLE ACT TO ADOPT UNIFORM RATES**

---

NATOA also contends, without support, that the Commission's proposal "conflicts with the Commission's statutory mandate under the 1992 Cable Act."<sup>8</sup> As described in NCTA's initial comments in this proceeding, however, the Commission has ample authority under the Act to allow an alternative methodology providing for rate calculations on other than a franchise-specific basis.<sup>9</sup> Contrary to NATOA's allegation, nothing in the 1992 Cable Act requires the Commission to maintain its reliance on existing community-specific variables, such as census income level, number of additional outlets, number of subscribers, and whether the system is part of an MSO, as the basis for determining reasonable rates.<sup>10</sup> And NATOA can point to nothing in the Act that requires the Commission to look only to franchise areas as the appropriate boundary for determining the reasonableness of an operator's rates. Moreover, NATOA ignores the fact that the Act also directs the Commission to reduce administrative burdens on operators, and grants the

---

<sup>8</sup> Id. at 6.

<sup>9</sup> Comments of the National Cable Television Association, Inc. (filed Feb. 12, 1996) at 4-7.

<sup>10</sup> NATOA Comments at 7.

Commission authority to adopt formulas that do so.<sup>11</sup> Uniform rate setting furthers these important statutory goals.

Several Florida cities also contend in their comments that rate uniformity "[w]ill undercut local franchising authorities' ability to require or negotiate specific benefits and services to satisfy the specific cable related needs and interests of subscribers in their communities."<sup>12</sup> But that is hardly the case. As described in the Commission's Notice, and as reiterated by several parties filing in this proceeding, the costs for PEG channels and other franchise requirements could still be accounted for separately, while an operator otherwise charges uniform rates across franchise boundaries. Thus, uniform rate-setting will not affect an LFA's power to require franchise-specific cable services. Rather, it merely will allow an operator to separate out those costs in making its rate calculations.

---

<sup>11</sup> 47 U.S.C. §543(2).

<sup>12</sup> Comments of the Cities of Cape Coral; Greenacres; Lantana; Miami; North Palm Beach and Pensacola, Florida (filed Jan. 11, 1996).

### **III. THE COMMISSION MUST NOT ALLOW LOCAL GOVERNMENTS TO IMPEDE IMPLEMENTATION OF UNIFORM RATES**

---

In our initial comments, we urged the Commission to establish mechanisms to ensure that individual franchising authorities cannot frustrate the goal of reducing administrative burdens that rate uniformity promises.<sup>13</sup> Specifically, NCTA urged that the Commission allow rates to take effect automatically at the end of the franchising authority's review period, subject to a later "true-up" if errors in rate calculations occur.

The need for such an approach is highlighted by a review of NATOA's comments. NATOA urges that the Commission adopt an approach that would "require operators to submit specific, detailed, uniform rate proposals to the Commission and to the regulatory authority in each affected community, and to obtain the approval of each of the authorities. This would permit all appropriate authorities to weigh the costs and benefits of each proposal and avoid unintended consequences."<sup>14</sup> There is no surer recipe for the failure of rate uniformity than adoption of NATOA's approach. If each local authority is permitted to "weigh the costs and benefits" based on its franchise-specific considerations, then cable operators would face the identical situation as is the case today. Local governments would likely fail to approve a uniform rate proposal if it would mean approval of a rate increase in their jurisdiction -- even if rates would go down in other areas.<sup>15</sup> Therefore, an operator

---

<sup>13</sup> NCTA Comments at 13-15.

<sup>14</sup> NATOA Comments at 7-8.


<sup>15</sup> The Comments of the City of Rock Hill starkly illustrate the problems that NATOA's approach would engender. Rock Hill has lower rates than the uniform rates charged by the same system to surrounding areas. Rock Hill contends that uniform rates would force its

would be faced with the worst of both possible worlds. It would face rate reductions in some jurisdictions, but it would be unable to increase rates in other jurisdictions to recoup those lost revenues. The entire benefit of rate uniformity would be lost.

### **CONCLUSION**

For the foregoing reasons, and for the reasons stated in our initial comments in this proceeding, the Commission's should adopt its proposal to provide an operator the option of charging uniform rates across franchise boundaries.

Respectfully submitted,

  
\_\_\_\_\_  
Daniel L. Brenner  
Diane B. Burstein  
1724 Massachusetts Avenue, N.W.  
Washington, D.C. 20036  
(202) 775-3664

Counsel for the National Cable  
Television Association, Inc.

March 12, 1996

---

residents to "subsidize" its neighbors -- and plainly states that "no local government could ever contemplate such an action." Comments of Rock Hill, SC at 2.